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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

SARA B. DRASIN,)	Case No. ED CV 16-00798-DFM
Plaintiff,)	
v.)	MEMORANDUM OPINION AND
)	ORDER
NANCY A. BERRYHILL, Deputy)	
Commissioner of Operations,)	
performing duties and functions not)	
reserved to the Commissioner of)	
Social Security, ¹)	
Defendant.)	

Sara B. Drasin ("Plaintiff") appeals from the Social Security Commissioner's final decision denying her application for Supplemental Security Income ("SSI"). For the reasons discussed below, the Commissioner's decision is affirmed and this matter is dismissed with prejudice.

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¹ On January 23, 2017, Nancy A. Berryhill became the Acting Social Security Commissioner. Thus, she is automatically substituted as the defendant under Federal Rule of Civil Procedure 25(d).

1 I.

2 BACKGROUND

3 Plaintiff filed an application for SSI alleging disability beginning August
4 1, 1991. See Administrative Record (“AR”) 16, 179. After her application was
5 denied at both the initial and reconsideration levels, see AR 99-103, 105-10,
6 she requested and received a hearing before an administrative law judge
7 (“ALJ”). See AR 30-72, 111. At the hearing, the ALJ heard testimony from a
8 vocational expert (“VE”) and Plaintiff, who was represented by counsel. See
9 AR 30-72. The ALJ granted Plaintiff’s motion to amend her alleged onset date
10 to July 27, 2010. See AR 35.

11 On August 15, 2014, the ALJ issued a written decision denying
12 Plaintiff’s claim for benefits. See AR 13. After finding that Plaintiff had the
13 severe impairment of pervasive developmental disorder, the ALJ determined
14 that her impairment did not meet or equal the severity of a listed impairment.
15 See AR 18. He also found that Plaintiff retained the residual functional
16 capacity (“RFC”) to perform a full range of work at all exertional levels, but
17 limited Plaintiff to simple and repetitive tasks, minimal contact with
18 coworkers, and no contact with the public. See AR 20. In reaching this
19 conclusion, the ALJ determined that Plaintiff’s testimony and other statements
20 about the extent of her limitations were “less than fully credible.” AR 23.
21 Based on Plaintiff’s age, education, work experience, residual functional
22 capacity, and the VE’s testimony that Plaintiff could perform the representative
23 occupations of hospital cleaner or garment sorter, the ALJ concluded that a
24 finding of “not disabled” was warranted. AR 24-25.

25 On February 26, 2016, the Appeals Council denied review of the ALJ’s
26 decision, which became the final decision of the Commissioner. See AR 1-4.
27 Plaintiff sought judicial review in this Court. See Dkt. 1.
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1 See AR 44-45, 59. Based on Plaintiff's testimony and self-reported functional
2 limitations, the ALJ determined that while Plaintiff's impairment could
3 reasonably be expected to cause the alleged symptoms, her "statements
4 concerning the intensity, persistence and limiting effects of these symptoms are
5 not entirely credible" for several reasons. AR 21.

6 First, the ALJ cited Plaintiff's history of limited treatment as a basis for
7 discounting her symptom testimony. See AR 21. The ALJ noted that despite
8 Plaintiff's claims of psychological difficulties and pervasive developmental
9 disorder, "there is no evidence that the claimant received regular and ongoing
10 specialized mental health treatment since her amended alleged onset date." Id.
11 Indeed, by Plaintiff's own admission, she sees only medical doctors, "not
12 psychologists or anything like that." AR 46. The record indicates that Plaintiff
13 received therapy intermittently from 2000 through 2006. See, e.g., AR 247-48,
14 273. However, she told an evaluating psychologist that she no longer needed
15 therapy in 2007. See AR 366. Thus, approximately three years passed between
16 the last time she attended therapy and her alleged disability onset date. As the
17 ALJ noted, Plaintiff did not receive the type of treatment expected of
18 limitations as broad as those alleged. See AR 22. For example, Plaintiff
19 explained that she did not take any medications for psychological problems.
20 See AR 47. Similarly, while one psychologist concluded that therapy could
21 help Plaintiff, she also found that Plaintiff exhibited "no neurological
22 dysfunction or gross psychopathology." AR 368. Plaintiff's failure to seek
23 treatment and conservative treatment recommendations by psychiatrists
24 indicate that Plaintiff's emotional, behavioral, and social issues could likely be
25 resolved with therapy and some medication. See, e.g., AR 247-48. The ALJ
26 thus validly relied on Plaintiff's "unexplained, or inadequately explained,
27 failure to seek treatment" in rejecting claimant's credibility. Fair v. Bowen, 885
28 F.2d 597, 603 (9th Cir. 1989); see also Tommasetti v. Astrue, 533 F.3d 1035,

1 1040 (9th Cir. 2008) (holding that ALJ may infer that claimant’s “response to
2 conservative treatment undermines [claimant’s] reports”).

3 Second, Plaintiff engaged in a “somewhat normal level of daily activity
4 and interaction” that undermined the credibility of her allegedly disabling
5 functional limitations. AR 22. Plaintiff reported that she could attend college
6 classes, perform household chores, read, take care of pets, maintain her
7 grooming and hygiene, use public transportation, make jewelry, maintain
8 contact with friends, attend church regularly, get along with others, and follow
9 instructions. See AR 201-08. While “[o]ne does not need to be ‘utterly
10 incapacitated’ in order to be disabled,” Vertigan v. Halter, 260 F.3d 1044, 1050
11 (9th Cir. 2001) (quoting Fair, 885 F.2d at 603), the extent of Plaintiff’s
12 activities support the ALJ’s finding that the reported severity of her
13 impairments was not fully credible. See Bray v. Comm’r of Soc. Sec. Admin.,
14 554 F.3d 1219, 1227 (9th Cir. 2009) (holding that ALJ may weigh
15 inconsistencies between claimant’s testimony and daily activities).

16 Third, Plaintiff made inconsistent statements regarding matters relevant
17 to disability. For example, the ALJ contrasted Plaintiff’s explanation that she
18 has difficulty in large social settings with her admission that she uses public
19 transportation and attends church regularly, both of which require being
20 around large groups of people. See AR 20-22. Similarly, while Plaintiff testified
21 that she was unable to concentrate without getting distracted, see AR 59, she
22 also reported that she could pay attention for “an extremely long time, as long
23 as needed,” and finish what she starts, AR 206. Her foster mother of ten years
24 also noted that Plaintiff is able to pay attention for “a long time” and finishes
25 what she starts. AR 198. Additionally, while Plaintiff testified that she has tried
26 looking for jobs, see AR 61-62, her foster mother wrote that she “has no
27 ambition to get a job,” AR 200. And while Plaintiff testified that she has a
28 great deal of social anxiety and does not socialize often, see AR 46, 52-53, 57,

1 she reported that she speaks with her friends and mother on the phone, sees
2 her friends at school, and attends church with no problems getting along with
3 family, friends, neighbors, or others, see AR 205-06. These inconsistencies
4 suggest that Plaintiff's mental symptoms are much less severe than alleged. See
5 Light, 119 F.3d at 792; Tommasetti, 533 F.3d at 1039 (holding that ALJ may
6 consider "prior inconsistent statements concerning the symptoms, and other
7 testimony by the claimant that appears less than candid").

8 Fourth, the ALJ considered that Plaintiff alleged that she had sought
9 employment after the alleged onset date, but noted that her inability to secure
10 employment is "not the same as the inability to perform basic work activities if
11 hired." AR 22. Plaintiff testified that she would "most likely take it" if
12 someone offered her a job where she could work by herself. AR 60. She
13 claimed that she has tried to look for work by applying to "multiple different
14 places" but has not heard back. AR 61-62. The ALJ did not err in considering
15 Plaintiff's unsuccessful job search in discounting her credibility. Based on the
16 record, her failure to find work was more likely caused by her failure to make a
17 concerted effort to work than by disabling symptoms that made her difficult to
18 hire. See Thomas, 278 F.3d at 959 (finding that ALJ permissibly discounted
19 claimant's credibility when claimant "had an 'extremely poor work history'
20 and 'has shown little propensity to work in her lifetime'").

21 Finally, the ALJ considered that Plaintiff did not demonstrate any
22 difficulty concentrating during the hearing. See AR 22. The transcript indicates
23 that Plaintiff was able to process information appropriately and respond clearly
24 to the ALJ's questions. See AR 42-62. Nothing suggests that Plaintiff was
25 distracted or had difficulty engaging at any point during the hearing. The ALJ
26 properly found that Plaintiff's demeanor at the hearing did not support the
27 alleged severity of her limitations. When considered alongside the other
28 reasons for partially discrediting Plaintiff's symptom testimony, the ALJ could

1 rely on Plaintiff's lack of apparent limitations at the hearing. See Orn v.
2 Astrue, 495 F.3d 625, 639 (9th Cir. 2007) (ALJ's "observations of a claimant's
3 functioning" at the hearing are permissible as part of the overall credibility
4 assessment).

5 Having considered Plaintiff's lack of treatment, activities of daily living,
6 inconsistent statements, incomplete job search, and demeanor at the hearing,
7 the ALJ provided sufficiently specific, clear and convincing reasons for
8 discounting Plaintiff's subjective complaints about the severity of her
9 symptoms. Reversal is therefore not warranted.

10 **III.**

11 **CONCLUSION**

12 For the reasons stated above, the decision of the Social Security
13 Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

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15 Dated: April 25, 2018



18 DOUGLAS F. McCORMICK
19 United States Magistrate Judge
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